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HOUSE . . . . . No. 4057

By Mr. Turner of Dennis, a petition (subject to Joint Rule 12) of Cleon H. Turner relative to recording the testimony of children as witnesses in certain court proceedings. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to child testimony.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 16D of Chapter 278 of the Massachusetts General Laws, shall be amended by deleting the current language in its entirety and inserting in its place the following language:

(a) For the purposes of this section, the following words shall have the following meanings:

"Child witness". A person who is under the age of fifteen years and who is alleged to have been a victim of, or who is witness to an alleged violation of section thirteen B, thirteen F, thirteen H, twenty-two, twenty-two A, twenty three, twenty four or twenty four B of chapter two hundred sixty five, or section two, three, four, four A, four B, five, six, seven, eight, twelve, thirteen, sixteen, seventeen, twenty-four, twenty-eight, twenty-nine, twenty-nine A, twenty-nine B, thirty-three, thirty-four, or thirty-five A of chapter two hundred seventy two.

"Simultaneous electronic means". Any device or combination of devices capable of projecting a live visual and oral transmission such as closed circuit television.

13 “Proponent of a child witness”. A parent of the child witness, legal guardian of the child
14 witness, foster parent of the child witness, or victim witness assistant involved in the case at
15 hand.

16 (b) (1) At any time after the issuance of a complaint or indictment alleging an offense
17 under any of the statutes listed in section (a) above and prior to the date of trial, the court, on its
18 own motion or on motion of the prosecution or by request of any proponent of a child witness
19 shall order the use of a suitable alternative procedure for taking the testimony of a child witness
20 in proceedings pursuant to said complaint or indictment. Upon such motion or request, there
21 shall be a rebuttable presumption that the child witness is likely to suffer psychological or
22 emotional trauma as a result of testifying in open court, as a result of testifying in front of the
23 defendant, or as result of both.

24 (2) An order issued under paragraph (1) shall provide that the testimony of the child
25 witness be recorded on videotape or film to be shown in court at a later time or that the testimony
26 be transmitted to the courtroom by simultaneous means.

27 (3) Testimony taken by an alternative procedure pursuant to an order issued under
28 paragraph (1) shall be taken in the presence of the judge, the prosecutor, defense counsel and
29 such other persons as the court may allow in light of the sensitivity of the child witness. The
30 defendant shall also have the right to be present only if the court makes specific findings, based
31 on testimony presented, that the child witness is not likely to be intimidated by or otherwise
32 traumatized by the presence of the defendant.

33 (4) Testimony taken by alternative procedures pursuant to an order under paragraph (1)
34 shall be taken in a suitable setting outside the courtroom.

35 (5) When testimony is taken by an alternative procedure pursuant to an order issued
36 under paragraph (1), counsel for the defendant shall be given the opportunity to examine or cross
37 examine the child witness to the same extent as would be permitted at trial, and the defendant
38 shall be able to see and hear the child witness and to have constant private conversation with
39 defense counsel. The judge shall have the discretion to control the tone of questioning by the
40 prosecution and defense attorney to ensure that the child witness does not feel intimidated or
41 would otherwise be traumatized by the tone of the questioning.

42 (6) The film, videotape or transmission of testimony taken by an alternative procedure
43 pursuant to an order under paragraph (1) shall be admissible as substantive evidence to the same
44 extent as and in lieu of live testimony the child witness in any proceeding for which the order is
45 issued or in any related criminal proceeding against the same defendant or defendant(s) when
46 consistent with the interests of justice, provided that such an order is entered or re-entered based
47 on current findings at the time or within reasonable time before the film, videotape or
48 transmission is offered into evidence. Subsequent testimony of a child witness in any proceeding
49 shall also be taken by a suitable alternative procedure pursuant to this section.

50 (7) Whenever, pursuant to an order issued pursuant to paragraph (1), testimony is
51 recorded on videotape or film or is transmitted to the courtroom by simultaneous electronic
52 means, the court shall ensure that:

53 (a) The recording or transmitting equipment is capable of making an accurate recording
54 or transmission and is operated by a competent operator;

55 (b) The recording or transmission is in color and that the witness is visible at all times;

56 (c) Every voice on the recording or transmission is audible and identified;

57 (d)The courtroom is equipped with monitors that permit the jury and others present in the
58 courtroom to see an hear the recording or transmission;

59 (e) In the case of recorded testimony, the recording is accurate and has not been altered or
60 edited without the express consent of the defendant or defendant's counsel;

61 (f) In the case of recorded testimony, each party is afforded the opportunity to review the
62 recording before it is shown in the courtroom.

63 (8) Nothing in this section shall be deemed to prohibit the court from using other
64 appropriate means, consistent with this section and other laws and with the defendant's rights, to
65 protect the child witness from trauma during a court proceeding.

66 (9) All of the testimony, questioning, and discussion on any such transmission, film or
67 videotape shall be transcribed into the records of the proceedings as if the testimony, questioning
68 and discussion had taken place in the courtroom.

69 (10) Not withstanding any other law or special law to the contrary, the recording, film or
70 videotape of the proceeding shall not be public record but a transcript of such transmission,
71 recording, film or videotape shall be deemed to be public record.

72 (11) The district attorney or assistant district attorney in charge of prosecution of the
73 matter in which the child witness is intended to testify shall inform the parent, legal guardian or
74 foster parent of the child witness of the right of the child witness to opt for alternative means of
75 testifying as outlined in this section. At the pre-trial conference in said matter, the judge
76 conducting such conference shall specifically ask the representative of the district attorney's
77 office at such hearing whether the child witnesses proponents have been advised of this chapter

78 and section and of its provisions. The judge conducting said pre-trial conference shall note the

79 response of the district attorney's representative in the court record.